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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 380

NGIM AH OY, PETITIONER

v.

EDWARD L. HAFF, AS DISTRICT DIRECTOR, UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, PORT OF SAN FRANCISCO, CALIFORNIA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 76–81) is reported in 112 F. (2d) 607.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered June 11, 1940 (R. 82). A petition for rehearing was denied June 29, 1940 (R. 82). The petition for a writ of certiorari was filed August 28, 1940. The jurisdiction of this Court is invoked

under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the Secretary of Labor under U. S. C., Title 8, Section 152, may properly authorize the examination of an alien arriving at a United States port by a single immigrant inspector.[1]

STATUTE INVOLVED

The provision of U. S. C., Title 8, Section 152 (Immigration Act of February 5, 1917, c. 29, Section 16, 39 Stat. 874, 885), upon which the petitioner relies, is

> * * * All aliens arriving at ports of the United States shall be examined by at least two immigrant inspectors at the discretion of the Secretary of Labor and under such regulations as he may prescribe * * *.

This section is copied at some length in the Appendix (*infra*, pp. 9–10).

STATEMENT

Petitioner sought entry into the United States under Section 1993 of the Revised Statutes, as

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[1] While the petitioner did not specifically raise this question in her petition for writ of habeas corpus (R. 1–8) or in her specification of errors in the court below (R. 67–71), the question was considered by the Circuit Court of Appeals (R. 79–81) and therefore will be discussed in this brief.

Petitioner also presents several subsidiary points on which, however, she does not rely for the allowance of a writ of certiorari (Pet. 4–6). These are, consequently, not discussed.

amended (U. S. C., Title 8, Section 6), as the foreign born daughter of a citizen of the United States (R. 2). She was inspected by a United States immigrant inspector and detained by him for examination by a Board of Special Inquiry, which, after hearing, denied petitioner admission to the United States (R. 3–6, 10–11). On appeal to the Secretary of Labor the Board's decision was affirmed (R. 11). A petition for writ of habeas corpus was then filed in the District Court for the Northern District of California (R. 1–12). That court issued an order to show cause (R. 9), to which the respondent filed a return (R. 10–58). After a hearing the court denied the petition (R. 59). Upon appeal the Circuit Court of Appeals for the Ninth Circuit unanimously affirmed the District Court's order (R. 76–82).

ARGUMENT

The petitioner contends that by virtue of the sentence in U. S. C., Title 8, Section 152, reading "All aliens arriving at ports of the United States shall be examined by at least two immigrant inspectors at the discretion of the Secretary of Labor and under such regulations as he may prescribe", it is required that the examination of an alien be by at least two immigrant inspectors.[2]

[2] It would seem clear that U. S. C., Title 8, Section 152, applies to a Chinese seeking admission as the alleged child of an American citizen. Cf. *United States* v. *Sing Tuck*, 194 U. S. 161; *Chin Yow* v. *United States*, 208 U. S. 8.

This contention, however, is refuted by the other provisions of the section, the legislative history of the sentence, and the administrative interpretation thereof.

(a) The other provisions of the section disclose that Congress contemplated that the inspection of aliens could be by a single immigrant inspector. Moreover, the section would not be consistent in all its parts if the provision in question were construed as requiring examination by two inspectors. Thus, it is provided in the section that—

> any district court within the jurisdiction of which investigations are being conducted by *an immigrant inspector* may, in the event of neglect or refusal to respond to a subpoena issued by any commissioner of immigration and naturalization or inspector in charge or refusal to testify *before said immigrant inspector,* issue an order requiring such person to appear before *said immigrant inspector* * * *. Every alien who may not appear to the *examining immigration inspector* at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained * * *.
>
> * * * The decision of *an immigrant inspector,* if favorable to the admission of any alien, shall be subject to challenge by any other immigrant inspector * * *. [Italics ours.]

The last sentence does not lend any support to the petitioner's contention. While it subjects to

the challenge of any other inspector the decision of the examining inspector that an alien shall be admitted, it does not require that there be present at each examination a second inspector in order that he may determine whether a decision favorable to the alien should be challenged. It merely opens to challenge the examining inspector's decision, where it favors the alien, if another inspector has in some manner become aware of the decision (possibly either through being present at the alien's examination or through a reading of the evidence taken at the examination, where recorded [3]), and disagrees with the decision.

(b) If there were any doubt as to the meaning of the provision in question, that doubt is dispelled by the legislative history. The provision had its genesis in H. R. 6060, introduced in the Sixty-third Congress (Cong. Rec., Vol. 50, p. 2013), and was finally passed as a part of H. R. 10384 in the Sixty-fourth Congress (Cong. Rec., Vol. 54, p. 2629). As originally introduced, H. R. 6060 contained no provision with reference to the number of inspectors who should examine aliens. In response to a request by the Chairman of the Senate Immigration Committee, the Secretary of Labor wrote the Chairman a letter giving his views on H. R. 6060. In his letter (Sen. Doc. 451, 63d Cong., 2d Sess.), the Secretary stated that "I believe that provisions of the following nature should be incorporated in the bill,

[3] See Appendix, *infra*, p. 9.

under which * * * the primary examination by immigrant inspectors at United States ports could be materially improved, to-wit: * * * a clause reading: 'All aliens arriving at United States ports shall be examined by at least two immigrant inspectors.' The expense of administering the law would, of course, be considerably increased by requiring a double inspection of the kind mentioned;"

This suggestion was accepted by the Senate Immigration Committee (Sen. Rep. 355, 63d Cong., 2d Sess.), and the amendment was incorporated in the bill by the Senate. In conference it was recommended that there should be added after the word "inspectors" the clause which now appears in Section 152, "at the discretion of the Secretary of Labor and under such regulations as he may prescribe" (Cong. Rec., Vol. 52, pp. 1338, 1629). In explaining this amendment it was stated on the part of the managers of the Senate (Cong. Rec., Vol. 52, p. 1339):

> To the amendments of the Senate which provide a double inspection * * * for immigrants, the managers on the part of the House agree *with amendments giving the Secretary of Labor discretion in the matter.* To these amendments the managers on the part of the Senate agree. [Italics ours.] [4]

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[4] A similar statement was made by the managers on the part of the House (Cong. Rec., Vol. 52, p. 1630).

It is, therefore, evident that Congress left to the discretion of the Secretary of Labor the question as to the number of inspectors who should examine aliens arriving at United States ports.

(c) The Secretary of Labor has administratively construed the provision in question as reposing in him discretionary power to determine the number of inspectors who should participate in the examination of aliens. Thus in the immigration rules first promulgated following the enactment of the Immigration Act of February 5, 1917 (Immigration Rules of May 1, 1917, Rule 3, Subdivision 1), it was provided that at each of certain named ports two immigrant inspectors should pass on the case of each arriving alien and that at other ports double inspection should be maintained whenever feasible. Later the regulations omitted reference to double inspection, and the present regulation, the one in effect when the petitioner arrived, provides that "The appropriate officer shall determine as promptly as circumstances permit the right to admission of each alien applying for entry into the United States" (Immigration Rules of January 1, 1930 (as amended to December, 1936), Rule 3, Subdivision B, Par. 1).

CONCLUSION

The decision of the Circuit Court of Appeals was clearly correct and there exists no conflict of de-

cisions. We therefore respectfully submit that the petition for writ of certiorari should be denied.

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SEPTEMBER 1940.